

February 16, 2021

Comment regarding “Advanced Notice of Proposed Rulemaking (ANPR) on Reforming the Community Reinvestment Act Regulatory Framework”

RE: Docket R-1723 and RIN numbers 7100-AF94

To Whom it May Concern:

Chicago Community Loan Fund (CCLF) is submitting this comment on the Federal Reserve System (Fed) Advance Notice of Proposed Rulemaking (ANPR) regarding the modernization of the Community Reinvestment Act (CRA). CCLF is a 30 year old Community Development Financial Institution providing responsible capital in areas of most need in the six-county region surrounding Chicago. CRA was largely responsible for the 545 loans CCLF has made totaling \$253 million to for-profit and nonprofit developers working to create or preserve affordable housing, commercial retail and community facilities in low- to moderate-income (LMI) census tracts throughout Chicagoland. CCLF’s financing also supports social enterprises and since its founding has leveraged an additional \$1.5 billion that has resulted in 11,346 mostly affordable housing units and 6,339 jobs.

CCLF appreciates this opportunity to comment on the ANPR provided by the Fed. In order to bolster CRA’s effectiveness, reforms are necessary to take into account changes in banking and technology. As the Fed contemplates CRA reform, CCLF encourages the Fed to work with the Office of the Comptroller of the Currency (OCC) and Federal Deposit Insurance Corporation (FDIC) to have common rules used by all three regulators. The OCC published its final rule in May 2020 to strengthen and modernize the agency’s regulations under the CRA to encourage banks to engage in more activities to serve low- and moderate-income communities, but these rules are currently being challenged in court. The American Bankers Association, with several other trade associations, called on the OCC to withdraw the agency’s CRA and worked with all three banking agencies on new rules. The Fed’s proposed rules to modernize CRA are a strong foundation for all three regulators to work together.

The Fed’s objectives, as described in the ANPR, are comprehensive and address key points for:

- Assessment areas and defining local communities for CRA evaluations – Keeping branches as assessment areas are important to addressing local needs, but defining assessment areas for internet banks and banks that do a majority of their retail banking online should not provide a disincentive to invest in LMI communities.
- Overview of the Evaluation Framework – The Fed’s Retail Test and Community Development Test and subtests provide a benchmark for banks to measure performance prior to an exam and account for local factors by using both national and local benchmarks. This is a stronger way to measure CRA than the proposed metric formula offered by the OCC.
- Identifying qualifying activities both within and outside of an assessment area – Publication of illustrative lists of qualifying activities will help to provide transparency on what will count, but the list should not imply it is exhaustive and continue to encourage creative lending, investments and services tailored to local needs.

- Strategic plans – Allow for banks to customize their CRA activities based on feedback from the local community and use a strategic plan for CRA evaluation.
- Ratings – The ratings of “outstanding,” “satisfactory,” “needs to improve” and “substantial noncompliance” provide a clear grade for regulated banks. There should be swift plans for improvement for any banks rated “needs to improve” or “substantial noncompliance” that takes into account community feedback.
- Data collection and reporting – Using existing data as a priority wherever possible and making the data publicly available will provide transparency needed by all stakeholders.

CCLF ANPR Comments

The ANPR offers 99 questions for comment. As a Community Development Financial Institution that does not provide consumer services or take deposits, CCLF is limiting its response to questions 2, 13, 39, 64 and question 67 of the ANPR.

Q. 2) In considering how the CRA’s history and purpose relate to the nation’s current challenges, what modifications and approaches would strengthen CRA regulatory implementation in addressing ongoing systemic inequity in credit access for minority individuals and communities?

On the first day in office, President Biden signed an executive order requiring that the Federal Government pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality. This mandate applies to CRA. The opening paragraph of the Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government states:

“Equal opportunity is the bedrock of American democracy, and our diversity is one of our country’s greatest strengths. But for too many, the American Dream remains out of reach. Entrenched disparities in our laws and public policies, and in our public and private institutions, have often denied that equal opportunity to individuals and communities. Our country faces converging economic, health, and climate crises that have exposed and exacerbated inequities, while a historic movement for justice has highlighted the unbearable human costs of systemic racism. Our Nation deserves an ambitious whole-of-government equity agenda that matches the scale of the opportunities and challenges that we face.”

The original purpose of CRA was to combat redlining in low- and moderate-income neighborhoods. Chicago is the birthplace of the CRA. Chicagoan Gale Cincotta received the honorary title of “Mother of CRA” because she was a key witness in hearings, providing research on the history and pattern of mortgage discrimination in Chicago to the Senate Banking Committee in 1975 and Senate hearings in 1976. It was hard working African American families that were denied access to credit to purchase homes in Chicago which Cincotta fought for all people of color. CCLF works every day to ensure the ground-breaking work of Cincotta and many other community activists leads to access to capital for African Americans and Latinx populations. Currently, 85% of the families and individuals that benefit for CCLF’s financing are African American and 5% are Latinx.

Examiners should consider loans, investments and services to people of color provided by banks as an eligible activity for CRA credit. To reduce the burden on data collection, this can be measured using

existing data such as GEO mapping software that uses U.S. Census data or demographic information captured in surveys of loans applicants.

Because redlining and disinvestment have been a structural feature of public and private sector financing for decades, remedies to redlining must likewise be systematic and embedded in each and every test and subtest of CRA exams. CRA exams should explicitly examine lending, community development financing and services in communities of color. A way to increase access to credit and capital for people of color is to add performance measures on the CRA tests and subtests that assess lending, investing and services to people of color and communities of color. On the retail lending subtest, performance measures could include the percent of loans to people of color and the percent of loans in communities of color. On the community development subtest, a performance measure could be the number and percent of community development loans and investments in communities of color. Likewise, the service retail subtest could measure banks' performance in placing branches and receiving deposits from communities of color.

Question 13: Is \$750 million or \$1 billion an appropriate asset threshold to distinguish between small and large banks? Or should this threshold be lower so that it is closer to the current small bank threshold of \$326 million? Should the regulation contain an automatic mechanism for allowing that threshold to adjust with aggregate national inflation over time?

CCLF opposes increasing the asset threshold for small bank designation above \$326 million, and is concerned that such a change could drastically remove or curtail community development and investment activities currently practiced by a large section of the banking community who do not currently qualify for small bank status, but would, should the Board implement the proposed change. The CRA statute and regulators treat small banks differently based on policy rationale, thus allowing these institutions to more easily comply with CRA, balancing the aims of the statute against any burden on the bank. Banks that operate at \$750 million or \$1 billion asset size are not equal in burden share to that of small banks, and therefore should be held to existing standards. CCLF supports adjusting the small asset threshold to inflation.

Question 39: Are there other alternatives that would promote liquidity by freeing up capital so that banks and other lenders, such as CDFIs, can make additional home mortgage loans to LMI individuals?

CCLF believes undue restrictions on loan purchases could unnecessarily restrict market liquidity, particularly for CDFIs. The Fed should consider a CDFI exception, which would allow full CRA credit for those loans originated by CDFIs, regardless of the number of purchases.

Question 51: Should financial literacy and housing counseling activities without regard to income levels be eligible for CRA credit?

The modernization of CRA should not include expansion of activities that do not meet the needs of LMI communities. Financial literacy and housing counseling activities provided to LMI communities and people of color should count for CRA credit and credit should not be given regardless of income levels.

Question 64: Would providing CRA credit at the institution level for investments in MDIs, women-owned financial institutions, and low-income credit unions that are outside of assessment areas or eligible states or regions provide increased incentives to invest in these mission-oriented institutions? Would designating these investments as a factor for an “outstanding” rating provide appropriate incentives?

CCLF believes that providing CRA for investments in MDIs, women-owned financial institutions, and low-income credit unions that are outside of assessment areas or eligible states or regions provide increased incentives to invest in these mission-oriented institutions. The Fed should designate these investments as a factor for an outstanding rating.

Q. 67) Should banks receive CRA consideration for loans, investments, or services in conjunction with a CDFI operating anywhere in the country?

CCLF fully supports the Fed’s proposal to grant automatic CRA community development consideration for community development activities that banks engage in with CDFIs certified by the U.S. Treasury’s CDFI Fund. Certified CDFIs share a common goal of expanding economic opportunity in low-income communities by providing access to financial products and services to local residents and businesses. CDFIs, by their mission, support a particular tenant of CRA which is to help meet the credit needs of LMI and minority populations. CDFIs are evaluated on an annual basis by the CDFI Fund and unregulated CDFIs may have independent ratings which are available to the public to review.

To be in compliance and maintain your certification, CDFIs must submit an annual report to the CDFI Fund documenting its lending, its target market, its technical assistance services and financial statements. The CDFI must provide 60% or more of its financial products to LMI areas and some specialize in financing community development in federally designated communities in persistent poverty, provide access to financing that will advance people with disabilities, or provide healthy food in a food desert.

Many CDFIs that are not regulated have their performance rated by Aeris®, which provides an independent assessment covering all aspects of the CDFI’s operations including governance, management, portfolio performance, public policy and finances. Aeris® provides two ratings—one for financial performance and one for social impact. Aeris® Financial Ratings assess capitalization, asset quality, management, earnings and liquidity. Aeris® Impact Ratings assess the pursuit and achievement of social mission as evidenced by products and strategies, use of resources and how impact is measured, and informs the refinement of those products and strategies.

Additionally, CDFIs have investor covenants and benchmarks provided by its trade association, Opportunity Finance Network. Together, these compliance performance requirements help confirm that CDFIs are in alignment with the intent and purpose of CRA. Therefore, banks that provide loans, investment, grants or services to CDFIs should be given automatic CRA credit as they would for Minority Depository Institutions, women-owned financial institutions and low-income credit unions.

CCLF supports the Federal Reserve’s proposal to allow automatic CRA credit for qualified activities in conjunction with certified CDFIs located anywhere in the country, even outside of the bank’s assessment areas. CCLF has a general pool of investment funds as do many national CDFIs. The projects CDFIs finance and provide technical assistance are in LMI communities and more often reach underserved areas where

credit access has been absent for decades. Banks should be required to partner with CDFIs in their local assessment areas but should receive credit, even if a partner CDFI-financed project is outside of their assessment area.

Similar to the recommendations for MDIs, investments in CDFIs must be meaningful to ensure they reach historically overlooked communities. Banks should receive additional credit for working with CDFIs based in or serving designated areas of need and CDFIs serving communities of color, and for providing equity or equity equivalent products.

In conclusion, meaningful CRA reform could boost lending and access to banking in underserved communities. Lending and access to banking for people and communities of color must be considered on CRA exams. Credit for lending to a CDFI should always be counted toward CRA credit. CDFIs have served as a strong partner for banks, ensuring capital reaches their assessment areas through loan participation, pooled investments or investments in the CDFI. CDFIs lend responsibly in LMI communities and any loan, investment, grant or services provided to a CDFI should provide CRA credit to the bank. CDFIs should qualify for the same status as current law provides for minority and women-owned depository institutions and low-income credit unions. Banks providing grants and investments to CDFIs should be given automatic CRA consideration as long as the CDFIs are meeting legitimate community development needs.

Calvin L. Holmes
President